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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ZACHARY MARQUIS EGGLESTON, Defendant and Appellant.	G045629 (Super. Ct. No. 05CF0832) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James Odrizola, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Dismissed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr. and Sharon L. Rhodes, Deputy Attorneys General, for Plaintiff and Respondent.

Zachary Marquis Eggleston appeals from an order recommitting him for one year to the State Department of Mental Health (DMH) for treatment as a mentally disordered offender (MDO). (Pen. Code, §§ 2970, 2972.)[1] Eggleston contends two exhibits pertaining to issuance of orders that he be involuntarily medicated were erroneously admitted into evidence because the documents were not properly authenticated. We conclude the appeal is moot because the one-year commitment order expired and, accordingly, we dismiss the appeal.

THE MDO ACT

"The MDO Act (§ 2960 et seq.) was enacted 'to protect the public from dangerously mentally disordered criminal offenders.' [Citation.] It 'requires certain mentally disordered prisoners who have committed specifically identified violent crimes to submit to continued mental health treatment. . . .' [Citations.] [¶] The determination that an individual requires treatment as an MDO is governed by six criteria enunciated in section 2962. Such treatment is warranted if the prisoner '(1) has a severe mental disorder; (2) used force or violence in committing the underlying offense; (3) had a disorder which caused or was an aggravating factor in committing the offense; (4) the disorder is not in remission or capable of being kept in remission absent treatment; (5) the prisoner was treated for the disorder for at least 90 days in the year before being paroled; and (6) because of the disorder, the prisoner poses a serious threat of physical harm to other people.' [Citation.] Treatment is inpatient unless the [DMH] agrees to treat the prisoner on an outpatient basis. [Citations.] If the prisoner's severe mental disorder can be put into and kept in remission, treatment must be discontinued. [Citations.] If not, the extension provisions of section 2970 come into play. [Citation.] [¶] Under section 2970, 'if the prisoner's severe mental disorder is not in remission or cannot be kept in remission without treatment, the medical director of the state hospital which is treating the

[1] All further statutory references are to the Penal Code, unless otherwise indicated.

parolee . . . shall submit to the district attorney . . . his or her written evaluation on remission.' The evaluation must be submitted to the district attorney '[n]ot later than 180 days prior to the termination of parole, or release from prison if the prisoner refused to agree to treatment as a condition of parole as required by [s]ection 2962.' After receipt of the evaluation, '[t]he district attorney may then file a petition with the superior court for continued involuntary treatment for one year.' (§ 2970.) . . . . [¶] Section 2972 requires the court to conduct a hearing on the petition for continued treatment filed pursuant to section 2970. Recommitment must be ordered if the court or a jury finds '(1) that the [prisoner] has a severe mental disorder; (2) that the disorder is not in remission or cannot be kept in remission without treatment; and (3) that the [prisoner] represents a substantial danger of physical harm to others by reason of the disorder. (§ 2972, subd. (c).)' [Citation.] The patient must be 'recommitted to the facility in which the patient was confined at the time the petition was filed, or recommitted to the outpatient program in which he or she was being treated at the time the petition was filed, or committed to the [DMH] if the person was in prison. The commitment shall be for a period of one year from the date of termination of parole or a previous commitment or the scheduled date of release from prison as specified in [s]ection 2970.' (§ 2972, subd. (c).)" (*People v. Superior Court (Salter)* (2011) 192 Cal.App.4th 1352, 1356-1357.)

FACTS

Eggleston, who was 26 years old at the time of the recommitment hearing, was 19 years old when he was first diagnosed as schizophrenic. Over the years he has been sometimes hospitalized and has taken various antipsychotic medications. He also has a history of methamphetamine and marijuana dependence.

In 2005, Eggleston was not taking his prescribed medications. He shoved an elderly man who was visiting at the family home, causing the man to fall, strike his head, and suffer a severe injury. Eggleston pled guilty to aggravated assault (§ 245,

subd. (a)(1)), and admitted he personally inflicted great bodily injury on the victim (§ 12022.7, subd. (a)). The trial court placed him on probation. On August 3, 2006, Eggleston admitted violating probation, probation was terminated, and he was sentenced to prison for two years.

On June 30, 2008, while in prison, Eggleston was certified as an MDO, and committed at Atascadero State Hospital (ASH). In September 2009, he was decertified and paroled into the community. But by November 2009, Eggleston violated his parole by failing to report and failing to attend outpatient clinics. He was returned to prison in January 2010 and reenrolled into a mental health program. There is no indication in the record as to when he was released, but in September 2010, Eggleston again violated parole and was returned to prison for failing to attend outpatient clinics and a batterer's program, and using methamphetamine.

On November 16, 2010, Eggleston was transferred back to ASH for treatment due to his mental illness (diagnosed at the time with schizoaffective disorder), because he represented a substantial danger of physical harm to others. His parole discharge date was April 8, 2011.

In January 2011, the People filed a petition to extend Eggleston's commitment pursuant to section 2970. After Eggleston waived time for trial, an amended petition was filed on April 14, 2011, and tried in a court trial.

Trial Evidence

Testimony of Dr. Steiner

Matthew Steiner, a staff psychiatrist at ASH, began treating Eggleston in late December 2010 and continued treating him until April 2011, when Eggleston was transferred to Orange County jail for trial on the commitment petition. Steiner testified that when Eggleston was transferred to the ASH treatment unit, his symptoms were consistent with chronic disorganized schizophrenia. Eggleston reported to Steiner that he had used marijuana and methamphetamine thousands of times. Steiner explained

Eggleston's methamphetamine use was particularly bad as it essentially counteracted the prescribed antipsychotic medications, and he was only in "institutional remission" of his substance abuse because he currently had no access to illegal drugs.

Steiner described several incidents in January 2010 when Eggleston engaged in violent threatening and paranoid behavior, which was consistent with his schizophrenia. Eggleston frequently refused to take his prescribed medication, even the ones he specifically agreed he would take.

During the first week of February 2011, things escalated. Eggleston told Steiner he would not take his current medications, Steiner gave him some alternative medication options, one of which Eggleston agreed to but later refused to take. Eggleston's agitation and paranoia increased. He became loud, psychotic, rambling, and paranoid, and appeared angry and tense. Steiner prescribed additional medications, but Eggleston continued to refuse some of them. On February 3, Steiner confronted Eggleston after he again spit out his medication; Eggleston complained the medications "slow [me] down too much." The comment caused Steiner concern because it was extremely unlikely that once outside the hospital environment a patient would voluntarily take medication he believed slowed him down. On February 4, and again on February 6, Eggleston became violent with staff, had to be placed in restraints, and told staff things like, "Fuck this place. I don't need meds. They make my thoughts weird."

On February 8, Steiner initiated a 72-hour emergency medication order so he could medicate Eggleston without his consent. On February 11, Steiner sought ASH internal review of his emergency involuntary medication order and requested permission to file a petition for a "*Keyhea* order"[2] to involuntarily medicate Eggleston for a longer period of time. Steiner testified he prepared reports for the in-house hearing and declarations in support of the petition. Steiner testified the petition was heard by an

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2 *Keyhea v. Rushen* (1986) 178 Cal.App.3d 526, 530.

administrative law judge (ALJ) on March 22, 2011, and the ALJ granted the petition, authorizing involuntarily medicating Eggleston from March 22, 2011, to September 18, 2011. Over defense objections, the trial court admitted into evidence two exhibits pertaining to involuntary medication orders described by Steiner—one pertaining to the temporary order issued on February 16, 2011, by ASH staff (exhibit No. 16), and the other was the *Keyhea* order and decision of the ALJ (exhibit No. 17).

Steiner testified he believed that from February 11, when he requested further ASH in-house review of his emergency order, until the petition was approved on March 22, 2011, Eggleston was subject to an involuntary medication order and Eggleston was aware of the order. After February 11, Eggleston began taking his medication regularly, except for one incident on March 4, when he was symptomatic and refused his medication. Steiner testified that after the involuntary medication order was obtained, Eggleston improved. But Eggleston had extremely limited insight into the role medication played in controlling his symptoms, and Steiner did not believe Eggleston would voluntarily take his medications outside of a supervised hospital setting.

Steiner opined Eggleston's mental illness was not in remission, and he disagreed with the defense expert's conclusion to the contrary. Due to the severity of Eggleston's mental illness, Steiner would not consider him in remission until he went a year without any overt signs or symptoms of the disease. Eggleston's jail records showed he still was symptomatic. In view of the severity of Eggleston's mental disorder, his history of drug abuse, his current environment, and his noncompliance with taking his medication, Steiner believed Eggleston represented a substantial danger of physical harm to others.

Testimony of Dr. Thomas

Veronica Thomas was the licensed clinical psychologist appointed by the court to evaluate Eggleston for purpose of determining whether he met the criteria for a MDO. Her testimony was consistent with Steiner's. Thomas concluded Eggleston

suffered from schizophrenia, a chronic severe mental disorder. When Thomas evaluated Eggleston in jail, he was not actively displaying psychotic symptoms, but otherwise his behavior was consistent with his mental illness. Based on her review of his treatment records from ASH, Thomas concluded Eggleston had not voluntarily complied or cooperated with his treatment plan, including the taking of medication.

Eggleston acknowledged to Thomas he had a mental illness that required medication, and said he was willing to take his medications but did not like taking them. Eggleston denied to Thomas that he refused to take prescribed medications at ASH. Eggleston told Thomas that he had been told by his current hospital team he did not need any further treatment for his mental illness. But Thomas testified ASH's records showed Eggleston not only refused medications during his current commitment to ASH, during his 2008 commitment at ASH he had at least two involuntary medication orders. In view of Eggleston's involuntary medication orders and his parole violations for failing to attend parole outpatient clinic and take his medication, Thomas was concerned about whether Eggleston could be safely released in the community. She believed that if he was outside of a secure and controlled hospital environment without treatment, Eggleston's prognosis would be very poor. Thomas also found Eggleston's severe and untreated history of methamphetamine use, which aggravated his mental illness symptoms, made the likelihood of future dangerousness high.

Thomas did not consider Eggleston's mental illness to be in remission, and she would not consider it in remission until he had at least 90 days free of psychotic symptoms while in the hospital setting of ASH (not in the jail hospital). Moreover, even if Eggleston was currently in remission, Thomas concluded he was incapable of remaining in remission without medication or treatment. Eggleston had not demonstrated he could voluntarily comply with treatment once released. Thomas disagreed with the contrary opinion of the defense expert, and she concluded Eggleston posed a substantial threat of danger and physical harm to others.

Testimony of Dr. Grayden

Thomas Grayden, a forensic psychiatrist, testified as an expert witness on behalf of Eggleston. He concluded Eggleston's severe mental disorder, schizophrenia, was in remission because he was not currently having positive symptoms (e.g., overt hallucinations or delusions), but was only having only negative symptoms (e.g., slowness in responses, flat or very blunted affect). Eggleston had shown improvement since his medication was changed in February 2011, but he required treatment to remain in remission. Grayden acknowledged the DMH required a patient's overt signs and symptoms be controlled for 12 months for a mental illness to be in remission, rather than the four to six month period Grayden was basing his conclusions on.

Although Grayden agreed schizophrenia combined with substance abuse was a risk factor for dangerous behavior, Grayden felt Eggleston posed a low risk of danger to others because he was now on a more effective regimen of medications and had not engaged in poor conduct since his medication was changed in February. Grayden concluded Eggleston was capable of being medication-compliant outside of a hospital setting, although he also agreed Eggleston's past history of stopping medications once released, and his substance abuse history, could interfere. Grayden believed the fact Eggleston had been subject to an involuntary medication order since February 8, 2011, did not mean he was not capable of being medication-compliant if released.

Testimony of Eggleston

Eggleston testified he understood his symptoms would get worse if he stopped taking his medication. He knew using methamphetamine would make his mental illness worse but used it anyway. Eggleston admitted he walked out of his current substance abuse classes after 10 minutes because he felt he already knew the material from the previous program. Eggleston testified his current medication made him feel better so he would continue to take it. He denied telling a doctor he did not believe he had a mental illness anymore. Eggleston admitted he had a history of not taking his

medication, and he knew he was currently subject to an involuntary medication order, which meant ASH staff would inject the medication if he refused to take it orally. He admitted he did not like taking his current medication, medication is "for weak people," and he had some "ambivalence . . . about taking meds."

Ruling

On July 6, 2011, the court found Eggleston to be an MDO. It found he qualified for a one-year extension of his commitment pursuant to section 2972, and ordered his commitment extended to April 8, 2012.

DISCUSSION

Eggelston argues that although the order from which he appeals has expired, his appeal is not moot. Unfortunately, the Attorney General has not responded to this argument. Nonetheless, we disagree with Eggleston and conclude the appeal is moot.

"As a general rule, an appellate court only decides actual controversies. It is not the function of the appellate court to render opinions upon moot questions or abstract propositions, or . . . declare principles or rules of law which cannot affect the matter in issue in the case before it. [A] case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief." (*People v. Gregerson* (2011) 202 Cal.App.4th 306, 321, internal quotation marks and citations omitted.) Although an appeal may be moot, an appellate court retains discretion to decide it if there is an important public interest involved that will continue to recur and evade review. (See e.g., *County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1006; *In re Jody R.* (1990) 218 Cal.App.3d 1615, 1622.)

In *People v. Cheek* (2001) 25 Cal.4th 894 (*Cheek*), defendant challenged the order following the annual review hearing afforded defendants committed under the Sexually Violent Predators Act (SVPA) (Welf. & Inst. Code, § 6600 et seq.). (*Cheek, supra*, 25 Cal.4th at p. 896.) Before addressing the merits, the Supreme Court recognized

defendant's two-year commitment under the SVPA expired during the pendency of the appeal. (*Id*. at p. 897.) Nonetheless, the issue presented—whether at the annual review hearing a defendant has a right to call witnesses and cross-examine the state's witnesses—was one "likely to recur while evading appellate review" and involved a "matter of public interest." (*Id*. at pp. 897-898.) The Supreme Court exercised its discretion to address the issue for the guidance of future proceedings before dismissing the case as moot. (*Id.* at p. 898; see also *People v. Hurtado* (2002) 28 Cal.4th 1179, 1185-1186 [concluding appeal was moot but determining whether jury must find SVPA defendant will commit *predatory* acts if released where issue is raised in virtually every SVPA trial and appeal].)

Although *Cheek* involved the SVPA rather than the MDO statutory scheme, its rationale supporting dismissal is equally applicable here. In *People v. Fernandez* (1999) 70 Cal.App.4th 117, a case under the MDO law, the court concluded that although the appeal was moot because the recommitment period had expired, by reason of the expiration of the recommitment period, the issue presented—whether the trial court's failure to comply with statutory procedure concerning commencement of trial divested it of fundamental jurisdiction to proceed—should be addressed on the merits. The record showed defendant's commitment period had been extended while the appeal was pending and the court found "our decision [might] still affect the lower court's right to continue jurisdiction under the original commitment as well as the recommitment." (*Id*. at pp. 134-135; see also *People v. Rish* (2008) 163 Cal.App.4th 1370, 1380-1382 [question of trial court's statutory and sua sponte duty under section 2972 to determine suitability for outpatient treatment was important issue capable of repetition yet evading review, justifying merits decision in otherwise moot appeal]; *People v. Williams* (1999) 77 Cal.App.4th 436, 441, fn. 2 [although appeal from MDO recommitment order was "technically moot," the appeal raised issues concerning the trial court's fundamental

jurisdiction that were "important and of continuing interest" justifying opinion addressing the merits].)

Here, Eggleston's appeal does not involve an issue of public interest, such as the issues presented in the cases above. Nor is the issue presented by this appeal likely to recur. The sole issue Eggleston presents is whether two exhibits pertaining to orders authorizing Eggleston to be involuntarily medicated were properly authenticated. During Steiner's testimony regarding Eggleston's refusing medication, the trial court noted it did not yet have evidence a valid *Keyhea* order had in fact been issued. The next day, the district attorney presented: (1) exhibit No. 16—a one-page "Certification Hearing Decision Notice" issued by the DMH on February 16, 2011, informing Eggleston he met the criteria for involuntary medication and a petition for review to be heard by an ALJ would be filed to decide whether to continue medication for up to 180 days; and (2) exhibit No. 17—an "Order and Decision on Petition for Involuntary Medication" issued by an ALJ authorizing the DMH to involuntarily medicate Eggleston from March 22, 2011, to September 18, 2011. The district attorney represented she had just received both documents that morning via facsimile (fax) from ASH, as the fax information printed at the top of each document confirmed. The trial court admitted the faxed documents as official records under Evidence Code sections 1280 and 1530, despite Eggleston's objection there was no affidavit authenticating them. The issue presented on this appeal is particular to this case, is not likely to recur,[3] does not go to the court's

[3] Although in the opening brief Eggleston's appellate counsel states she was told a recommitment petition was filed, there is nothing in the record to support that assertion and no evidence before us that Eggleston was recommitted while this appeal has been pending. Moreover, even were we to agree the two documents were not properly authenticated, it would not implicate the validity of later extensions if indeed one has been sought. (See *Williams, supra,* 77 Cal.App.4th at p. 441, fn. 2.) Even if the court did not have the actual *Keyhea* order before it in this proceeding, Steiner testified he imposed an emergency 72-hour involuntary medication order because Eggleston consistently refused medications, and he applied for the ASH review and prepared the paperwork for the *Keyhea* order. Steiner testified Eggleston was aware involuntary medication orders

fundamental jurisdiction, and is not a novel question of unsettled law. The appeal involves only a garden variety evidentiary issue. We accordingly conclude the appeal is moot, and we decline to exercise our discretion to proceed to the merits despite this status.

DISPOSITION

The appeal is dismissed as moot.

O'LEARY, P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.

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existed, and he was treating Eggleston based on his belief the orders existed. Eggleston himself testified he was aware involuntary medication orders were in place and was taking his medication with knowledge he would be involuntarily medicated if he refused.